IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 222 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)

Versus

KARAMCHAND PREMCHAND PVT LTD - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR RK PATEL for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 01/03/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

At the instance of the revenue, the following two questions have been referred to this court for its

opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as '**the Act**') by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A'.

1. Whether the Appellate Tribunal erred in law in holding that the company's contribution to the provident fund for a sum of Rs. 40,800/- and company's contribution for superannuation fund for a sum of Rs. 61,200/- is not disallowable under section 36(1)(iv) of the Income-tax Act, 1961?

2. Whether the Appellate Tribunal was right in law in not entertaining the plea of the Department taken for the first time in the application dated 21st November, 1978 that the oder of the Appellate Asstt. Commissioner should be set aside or modified because it appeared that the directors had been admitted to the benefit of superannuation fund in contravention of Rule 86 of the Income-tax Rules?”

2. We have heard learned Standing Counsel Mrs. Mauna Bhatt appearing for the applicant-revenue and learned advocate Shri B.D. Karia for the respondent-assessee.

3. In our opinion, the questions referred to this court are no longer *res integra.*

4. So far as question No. 1 is concerned, it will have to be answered in favour of the assessee and against the revenue as the same is fully covered by the decision of

the Division Bench of this court in the case of CIT v. Karamchand Premchand Pvt. Ltd., (1985) 152 ITR 94. It may be noted here that the said judgment had been delivered in the case of the assessee itself and thereafter it was also followed by this court in the case of the assessee in 200 ITR 281. Thus, the said question is decided in the affirmative i.e. in favour of the assessee and against the revenue.

5. In view of the first question, which has been answered hereinabove, in our opinion, the second question does not survive and, therefore, we decline to answer the same.

The reference stands disposed of accordingly with no order as to costs.

(Anil R. Dave, J.)

(K.A. Puj, J.)

(hn)